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EXAMINER

JAKETIC, BRYAN J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/461,336

Applicant(s)

CHEN ET AL

Examiner

Bryan Jaketic

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-153 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-16, 23-45, 49-51, 58-81, 84-98, 100, 102-112, 115-129, 131 and 133-153 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims withdrawn from consideration are 11-13, 17-22, 46-48, 52-57, 82, 83, 99, 101, 113, 114, 130 and 132.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Examiner notes that non-elected claims 11-13, 17-19, 22, 47, 57, 99, and 130 have been amended. The amendments have been entered, but non-elected claims will not be considered unless they depend from an allowable generic claim. Currently, claims 1-10, 15, 16, 23, 24, 29-45, 50, 51, 58, 59, 64-81, 84, 88, 91, 97, 100, 102-112, 115-119, 122-128, and 131 are generic, and applicant has elected Species VI, comprising claims 14, 15-28, 49, 60-63, 89, 90, 98, 120, 121, and 129.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-5, 9, 10, 14, 15, 23, 29-40, 42, 44, 45, 49, 50, 58, 64-71, 73, 74, 77-81, 84, 85, 87, 88, 91-97, 100, 102, 104, 105, 108-112, 115, 116, 118, 119, 122-128, 131, and 133-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barzilai et al. Barzilai et al disclose a method enabling businesses to post one or more items for auction, wherein the item is valid for a predetermined period of time (see col. 18, lines 7-24; theater tickets are posted, which are valid for a predetermined period of time); enabling one or more users to place a bid on the item and processing the bids to determine a winner (see Fig. 4A); and awarding the winner the item (see Fig. 4B). Barzilai et al do not expressly teach that the items are valid for a period of time corresponding to a non-peak demand period. However, it is common in the art to sell matinee tickets at a lower price because of a lower demand. It would have been obvious to one of ordinary skill in the art at the time the invention was made to sell matinee tickets with the invention of Barzilai et al in order to maximize profit.

Barzilai et al further disclose the step of setting a minimum bid for the item (col. 11, line 57 through col. 12, line 10).

Barzilai et al do not teach that the business is a restaurant. However, businesses have non-peak demand periods much like theaters, and restaurants have long offered "bird specials" to patrons dining at non-peak hours. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the invention of Barzilai et al to sell non-peak hour dinner certificates instead of non-

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peak hour theater tickets, because restaurants have the same non-peak hour needs as theaters, and selling non-peak hour certificates would help generate profit.

Barzilai et al further teach a registration process where the user provides identification, which is stored by the system (see Fig. 3).

Barzilai et al also disclose the step of displaying current auction status information comprising an auction closing time and bid information (see col. 9, lines 53 through col. 10, line 7).

Barzilai et al do not disclose an instant purchase feature. However, it is common in the art for items to be sold based on a fixed dollar amount. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an instant purchase feature with the invention of Barzilai et al, because many users prefer to buy items at a fixed price rather than participate in an auction.

Barzilai et al disclose a personalized auction page where the user creates an auction list comprising auctions of interest and monitors them (see Fig. 7).

Barzilai et al do not disclose the step of enabling a restaurant to display an advertisement at a premium space. However, advertising is common in the art, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to enable a restaurant to advertise at a premium space to help promote the auction.

Barzilai et al disclose the step of displaying a list of current auctions and enabling the user to participate in a current auction (see Fig. 5 and col. 10, lines 32-57).

Barzilai et al do not disclose the step of enabling the restaurant to track and monitor bids or the number and type of items sold. However, it is common in the art for sellers to track and monitor bids and the number and type of items sold. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the step of enabling sellers to track and monitor bids and the number and type of items sold so they may gauge the success of the auction.

Barzilai et al do not disclose the step of providing to the restaurant a list of winning bidders. However, it is common in the art to provide the seller with the name of the bidder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the step of providing to the restaurant a list of winning bidders so that the seller may transmit the item to the bidders.

Barzilai et al do not teach the steps of receiving an attendance report from the restaurant and collecting a fee for certificates redeemed. However, it is common in the art to charge a fee to the seller for the use of an auction web site, and it is common in the art to charge a fee only for services actually completed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the steps of receiving an attendance report from the restaurant and collecting a fee for certificates redeemed as an equitable method of generating revenue.

Barzilai et al do not disclose the use of featured auctions or the step of collecting a premium fee for featured auctions. However, featured auctions are common in the art, and it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to employ featured auctions and charge a premium fee for them to generate additional revenue.

Barzilai et al do not teach that the winning bidder pays for the item when he is declared the winner or at the time it is used. However, it is common in the art for an auction winner to pay when he is declared the winner or at the time it is used. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the step of requiring payment when the winner is announced to ensure that payment is received.

5. Claims 6, 16, 41, 51, 72, 103, and 149-153 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barzilai et al as applied to claims 1, 36, 71, and 102 above, and further in view of Levin et al. Barzilai et al disclose the limitations of the claims as described in paragraph 3 of this Office Action. Barzilai et al do not disclose a search engine for searching for auctions by restaurant name or cuisine type. Levin discloses a search engine that allows users to search for restaurants by cuisine type (col. 3, lines 25-43 and col. 12, line 51 through col. 13, line 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the search engine of Levin et al with the invention of Barzilai et al to help users find restaurants of interest.

6. Claims 7, 8, 24, 43, 59, 86, 106, 107, 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barzilai et al as applied to claims 1, 36, 71, 102, and 105 above, and further in view of Fisher et al. Barzilai et al disclose the limitations of the claims as detailed in paragraph 3 of this Office Action. Barzilai et al do not disclose the



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steps of enabling bidders to place a quantity of item amount and a bid amount nor do they disclose an auto-bid feature. Fisher et al disclose the steps of enabling bidders to place a quantity of item amount and a bid amount (col. 8, lines 39-55). Fisher et al also disclose an auto-bid feature that allows the user to submit a maximum bid amount and a bid increment amount where the bids are automatically incremented to the maximum amount (col. 8, line 56 through col. 9, line 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Fisher et al with the invention of Barzilai et al to allow bidders to place a quantity of item amount and a maximum bid amount for the bidders convenience.

Barzilai et al do not disclose the steps of enabling the restaurant to set an auction schedule. Fisher et al disclose the step of enabling a seller to set an auction schedule (col. 8, lines 13-38). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Fisher et al with the invention of Barzilai et al to allow a seller to set a schedule to allow him to sell items at a time he prefers.

7. Claims 75 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barzilai et al and Levin et al as applied to claim 72 above, and further in view of Fisher et al. Barzilai et al and Levin et al disclose the limitations of the claims as detailed in paragraph 5 of this Office Action. Barzilai et al and Levin et al do not disclose the steps of enabling bidders to place a quantity of item amount and a bid amount nor do they disclose an auto-bid feature. Fisher et al disclose the steps of enabling bidders to place a quantity of item amount and a bid amount (col. 8, lines 39-

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55). Fisher et al also disclose an auto-bid feature that allows the user to submit a maximum bid amount and a bid increment amount where the bids are automatically incremented to the maximum amount (col. 8, line 56 through col. 9, line 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Fisher et al with the combination of Barzilai et al and Levin et al to allow bidders to place a quantity of item amount and a maximum bid amount for the bidders convenience.

Barzilai et al and Levin et al do not disclose the steps of enabling the restaurant to set an auction schedule. Fisher et al disclose the step of enabling a seller to set an auction schedule (col. 8, lines 13-38). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Fisher et al with the combination of Barzilai et al and Levin et al to allow a seller to set a schedule to allow him to sell items at a time he prefers.

8. Claims 25-28, 60-63, 89, 90, 98, 120, 121, and 129 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barzilai et al as applied to claims 1, 36, 71, and 102 above, and further in view of Boe et al. Barzilai et al disclose the limitations of the claims as described in paragraph 3 of this Office Action. Barzilai et al do not disclose the step of creating a survey for users to complete to receive targeted marketing and promotions. Boe et al disclose a system for profiling customers for targeted marketing comprising the steps of providing surveys for users to provide demographic information (col. 2, line 60 through col. 3, line 55) or purchase history data (504). It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to employ the teachings of Boe et al with the invention of Barzilai et al to provide sellers with information that would aid both present and future sales.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-132 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nation's Restaurant News discusses an auction that offers theater tickets and dinners. Plotnikoff discusses Applicant's invention.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Jaketic whose telephone number is (703) 308-0134. The examiner can normally be reached on Monday through Friday (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703)308-5183. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

bj



9/2/03